

# EXHIBIT

# 2

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

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MAGTEN ASSET MANAGEMENT CORPORATION and  
LAW DEBENTURE TRUST COMPANY OF NEW YORK,

Plaintiffs,

- against -

NORTHWESTERN CORPORATION,

Defendant.

CIVIL ACTION NO.: 04-1494 (JJF)

-----X  
MAGTEN ASSET MANAGEMENT CORP.,

Plaintiffs,

- against -

MICHAEL J. HANSON and ERNIE J. KINDT,

Defendants.

CIVIL ACTION NO.: 04-1494 (JJF)

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One New York Plaza  
New York, New York

May 2, 2007  
1:15 p.m.

Deposition of MARY LEWICKI, pursuant  
to Notice, before Melissa Gilmore, a Notary  
Public of the State of New York.

ELLEN GRAUER COURT REPORTING CO. LLC  
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New York, New York 10022  
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16  
17  
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20  
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22  
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2 our objection letter, our Rule 45  
3 objection letter dated April 6th?

4 MR. KAPLAN: We have -- I have.

5 MR. BIALO: Okay. And you noticed  
6 that in that letter, we have made the  
7 objection that discovery has been stayed  
8 by Judge Fried in the separate action  
9 brought by Magten against Bank of New  
10 York, in the New York County Supreme  
11 Court, and we are giving this deposition  
12 on the subjects that were defined by the  
13 April 25th production letter in the --  
14 which follows on the agreement after  
15 discussion between Ms. Nadritch and  
16 Mr. McCoy.

17 MR. KAPLAN: That is correct.

18 BY MR. KAPLAN:

19 Q. Ms. Lewicki, what is your current  
20 title at the Bank of New York?

21 A. I'm the conversion manager for the  
22 corporate finance and specialty products groups  
23 within corporate trust.

24 Q. And what do you do as the conversion  
25 manager?

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2 A. I have been responsible for the  
3 movement of the issues, the assets, and the  
4 cash from the swap between Bank of New York and  
5 JPM related to the corporate trust business and  
6 the retail business, specifically the corporate  
7 trust business.

8 Q. And how long have you been in that  
9 role?

10 A. That's one year.

11 Q. And what was your role before that?

12 A. I was a control officer for the  
13 structured finance group within corporate  
14 trust.

15 Q. And how long were you in that role?

16 A. Approximately two years.

17 Q. So from -- just to put context, from  
18 2004 to '06 or --

19 A. Probably mid 2004 through  
20 March 2006.

21 Q. And prior to that?

22 A. I was a -- I was a training officer  
23 for the corporate trust group.

24 Q. And when was that?

25 A. That started October, November 2003

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2 until I transferred over to the control officer  
3 position.

4 Q. And prior to October 2003?

5 A. I was a team leader in the corporate  
6 finance group and team leader relationship  
7 manager.

8 Q. And when? When were you the team  
9 leader?

10 A. I can't tell you exact dates when it  
11 began. It was two or three years.

12 Q. Two or three -- 2001 approximately?

13 A. Yes, yes.

14 Q. So for the period of 2001 and 2002,  
15 you were the team leader?

16 A. Yes.

17 Q. And what were your -- what was your  
18 responsibilities as the team leader?

19 A. As a team leader, I managed a group  
20 of approximately 12 people that were other  
21 relationship managers and trust associates, and  
22 just the general day-to-day administration of  
23 their accounts and projects processes within  
24 the bank.

25 Q. So did you -- so you oversaw the --



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2 well, just if you could --

3 A. Well, like a -- well, like a team  
4 leader is an interim step between -- you have a  
5 business manager, and you have a team leader.  
6 So you are not officially the manager, but you  
7 are taking on a lot of the management  
8 functionalities.

9 Q. Are there several different team  
10 leaders?

11 A. At the time I was in corporate  
12 finance, there were three.

13 Q. Were you the team leader responsible  
14 for the QUIPS, Quarterly Income Preferred  
15 Securities, that were issued by Montana Power?

16 A. I was the team leader and  
17 relationship manager.

18 Q. Okay. And what was your role as  
19 relationship manager?

20 A. I -- I was a -- as trustee, our role  
21 was to support the requirements under the  
22 governing documents, receipt of cash for debt  
23 service, or any other instances where it might  
24 be payment to bondholders. Confirmation that  
25 compliance documentation required under the

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2 agreement is received by us. Communications  
3 with bondholder of requests, some general --  
4 typically, general requests from bondholders.  
5 Preparation of any notices, if that was a  
6 requirement.

7 Q. And were there multiple relationship  
8 managers for each issuance, or was there just  
9 one?

10 A. For the QUIPS issuance?

11 Q. For the QUIPS issuance.

12 A. There was only one issuance of debt  
13 for that.

14 Q. And why was there only one  
15 relationship -- were you the sole relationship  
16 manager for that issuance?

17 A. In 2003 or 2002, yes.

18 Q. Okay. Who did you report to?

19 A. My business group manager. At that  
20 time, it was Doug Macinnes, M-A-C-I-N-N-E-S.

21 Q. Were there others that reported to  
22 you in connection -- solely in connection --  
23 I'm just focusing now on the QUIPS. Were there  
24 others who reported to you or were you solely  
25 responsible?

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2 A. On the QUIPS, I had -- I had a trust  
3 associate that supported me.

4 Q. And who was that?

5 A. Jeremy Finkelstein.  
6 F-I-N-K-E-L-S-T-E-I-N, I think.

7 Q. Just some general questions about  
8 role of a trustee. When you are the trustee  
9 for a bond issuance, do you generally review  
10 the financial statements issued by the issuer?

11 A. No, we do not.

12 Q. Were there ever circumstances in  
13 which you review the financial statements of  
14 the issuer?

15 A. No, we do not. It's not a  
16 requirement under the governing documents.

17 Q. If -- do you receive -- are there  
18 occasions when you are the trustee, that you  
19 would receive financial statements from the  
20 company?

21 A. Typically, under a QUIPS Indenture,  
22 it's one of the requirements that they provide  
23 us with their financial statements.

24 Q. And what do you do when you receive  
25 those financial statements?

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2 just wanted to make sure that we were  
3 clear on what the numbers were.

4 MR. KAPLAN: So we're only going to  
5 mark this. We are not going to mark that  
6 piece.

7 MR. BIALO: So we are going to  
8 remove BNY132 from Plaintiff's Exhibit 1?

9 MR. KAPLAN: That is correct.

10 MR. BIALO: Okay.

11 BY MR. KAPLAN:

12 Q. Is this the entire extract of the  
13 from the tickler system relating to the QUIPS?

14 A. Let me just take a quick look to  
15 make sure.

16 (Perusing.) Yes, it appears to be.

17 Q. Turning to the first page, which is  
18 BNY0105?

19 A. Um-hum.

20 Q. If you could just explain to me how  
21 to read this page? You see it says "Due Date,  
22 Lead Date, Completion Date and Close Date"?

23 Could you just explain to me what  
24 those columns mean?

25 A. Okay. Do you want me to go across

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2 the top, too, or you don't care about that?

3 Q. Sure. If I need that to understand  
4 the page, sure.

5 A. Okay. If you start off with the  
6 issue document number with an R, within the  
7 banks tickler system, each issuer -- each  
8 Indenture is given a docket number. That's  
9 just for tracking purposes. The office  
10 represents the location where it was  
11 administered, the unit, the corporate unit, the  
12 RM, and the trust associate.

13 I don't know when this was run as  
14 of, but this must have been after I left the  
15 office. It reflects Jeremy and another trust  
16 associate. Status would be "Terminated," and  
17 the "Date open" reflects, I believe the actual  
18 date of the governing documents.

19 And if you go down a little further,  
20 you have a -- far left column, you have number  
21 1. That's the tickler number. The tickler  
22 description, you will see "Debt service  
23 payment." Again, that's a reminder of an  
24 upcoming payment due to bondholders.

25 The "Lead Time" is "1," which

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2 represents one month. So the tickler would  
3 appear on the report one month prior to the due  
4 date.

5 The "Start Date" is the date that  
6 the first tickler was generated. The "End  
7 Date" is the end date that has been entered by  
8 the administrator.

9 "Frequency" let's you know that this  
10 is a quarterly tickler that has an action due  
11 on the due date. And "Administrative Open,"  
12 I'm not really sure what that means.

13 The "Due Date" is the actual date of  
14 an event that's going to occur. In this case,  
15 if you look at 3/31/99, that's when a debt  
16 service payment was due.

17 The "Lead Date" is the date that  
18 that tickler will print on a pending payment or  
19 a pending tickler report. So on 2/28/99 would  
20 be the first date that that tickler would  
21 appear.

22 The "Completion Status" in this  
23 case, it's marked "Closed," meaning that the  
24 payment was made, and then the date -- the  
25 close date, itself, is the date that the



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2 administrator actually marked it closed on the  
3 system.

4 Q. So just to clarify, so when it says  
5 "Closed," it means that the interest payment  
6 was actually -- was actually made on those  
7 days?

8 A. It was actually made, or if there  
9 was another event related to it where payment  
10 wasn't made, but another event replaced that,  
11 it indicates that.

12 Q. Okay. If you turn to the page  
13 marked BNY0111?

14 A. Yes.

15 Q. If you see towards the bottom of the  
16 paged in the middle of the page, there is a  
17 section that says "10/15/02, spoke to Gary  
18 Staudinger at company, who requested a copy  
19 of" --

20 A. Um-hum.

21 Q. Do you recall why you requested a  
22 copy of the compliance certificate?

23 A. I, personally, don't recall, but if  
24 you read what's on this report, we called  
25 because we hadn't gotten the certificate as of

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2 A. Okay. (Perusing.)

3 Okay.

4 Q. Do you recall signing this  
5 Supplemental Indenture?

6 A. I don't have a personal memory of  
7 it.

8 Q. Do you recall the transaction  
9 generally?

10 A. Not -- no.

11 Q. Do you recall the reason that you --  
12 that you were asked to execute the Supplemental  
13 Indenture?

14 A. I mean if you read from -- from the  
15 Supplemental Indenture, it's basically  
16 NorthWestern Corporation is jointly and  
17 severally, assuming the obligations of the  
18 company on the outstanding QUIPS deals. That's  
19 in the third WHEREAS clause.

20 Q. Do you recall any conversations with  
21 the issuer with respect to the execution of  
22 this Second Supplemental Indenture?

23 A. Not specifically, no.

24 Q. What is Bank of New York's practice  
25 or process regarding the approval and signing



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2 of supplementals to an Indenture?

3 A. First of all, the Bank of New York  
4 does not approve supplemental indentures.

5 MS. DELANEY: Excuse me, I'm -- I'm,  
6 just having trouble hearing you. If you  
7 could speak up, please?

8 A. To start over, the Bank of New York  
9 doesn't approve supplemental indentures or  
10 transactions contemplated by them. What we do  
11 is typically get a request from an issuer for a  
12 supplemental Indenture.

13 Pursuant to that request, we are  
14 required to receive an Officer's Certificate  
15 and an opinion of counsel. It's reviewed by  
16 the relationship manager. It's also sent to  
17 our external counsel for review and comment.  
18 Typically, our external counsel will work with  
19 issuer's counsel regarding any negotiation  
20 matters.

21 Once it's confirmed that the  
22 agreement conforms to what the Indenture  
23 requirements are, and the opinion and Officer's  
24 Certificate are in the correct format, then the  
25 document can be executed by the Bank of New

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2 York.

3 Q. Why does Bank of New York insist on  
4 receiving an Officer's Certificate?

5 A. It's a requirement under the  
6 governing document -- it's a right under the  
7 governing document to receive an Officer's  
8 Certificate. If you go to the Indenture, it's  
9 one of the stipulations when you are signing a  
10 supplemental Indenture, that we can ask for an  
11 opinion and an Officer's Certificate.

12 Q. But I understand it's the right that  
13 you have under the documents. Do you know why  
14 Bank of New York would insist on receiving an  
15 Officer's Certificate?

16 A. It's because the Officer's  
17 Certificate has to make certain statements by  
18 the client that we rely on, which we are  
19 entitled to rely on under the terms of the  
20 Indenture.

21 Q. Would you execute a Supplemental  
22 Indenture without receiving an Officer's  
23 Certificate?

24 A. Typically, it would depend on what  
25 your governing documents said. But if my

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2 governing documents says I am entitled to  
3 receive one, I would definitely require one.

4 Q. If you received an Officer's  
5 Certificate that created questions in your mind  
6 with respect to the validity of the statements  
7 contained in the certificate, what would you  
8 do?

9 A. What do you mean "validity" of the  
10 statements? I mean it's the Officer's  
11 Certificate pretty much has to make statements  
12 that are identified in the agreement.

13 Q. If you have questions with respect  
14 to the veracity of the statements in the  
15 Officer's Certificate, what would you do?

16 A. I mean typically, we are relying on  
17 the form of the statements unless -- we are  
18 relying on the form of the statements. It's  
19 reviewed by our counsel, it's reviewed with our  
20 senior management if we do have a question,  
21 but...

22 Q. I just want to show you some  
23 language, and it's still in the same Indenture.

24 A. Okay.

25 Q. If you look on page 3, which is

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2 NOR010001, in Section 302, there is a proviso  
3 there that I would like you to focus on?

4 A. (Perusing.) Yes.

5 Q. Specifically, the Supplemental  
6 Indenture provides -- it says, "provided,  
7 however, that the trustee shall not be  
8 responsible in any manner whatsoever for, or in  
9 respect of the validity or sufficiency of this  
10 Second Supplemental Indenture,..." and then it  
11 continues.

12 That language that I just read, is  
13 that language that the Bank of New York always  
14 insists upon in executing a supplemental  
15 Indenture?

16 A. I can't speak for everyone at the  
17 Bank of New York. That, I can say that is  
18 typical language in a Supplemental Indenture.

19 Q. When you were the relationship  
20 manager, did you always insist on that language  
21 in a Supplemental Indenture?

22 A. I can't remember every situation  
23 that I was in, but again, this is generally  
24 language that is very typical of a Supplemental  
25 Indenture.

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2 Q. And do you know why such language  
3 would be included?

4 A. It's for the protections of the  
5 trustee.

6 Q. Would you sign a Supplemental  
7 Indenture if you had doubts about its validity?

8 MR. BIALO: I'm going to object to  
9 the form. You can answer. If you can  
10 figure it out, you can answer it.

11 THE WITNESS: Okay.

12 A. Again, when I am signing a  
13 Supplemental Indenture, it is based on  
14 requirements by the governing documents. If  
15 the documents I'm getting, such as the opinion  
16 and the Officer's Certificate, the supplemental  
17 are in the form required by the governing  
18 document, and this has been reviewed by myself  
19 and counsel, I would sign the document as long  
20 as it met the terms and requirements.

21 Q. I understand that. The question I'm  
22 asking, though, is if you had a question about  
23 whether the Indenture or the Supplemental  
24 Indenture is valid under the terms of the  
25 Indenture, would you sign the Supplemental

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Indenture?

A. I think I'm confused with your question. I'm sorry.

Q. Well, okay, and let me -- let me try to be clearer. This language -- as I interpret this language, it says that the trustee is not responsible in respect of the validity of the Second Supplemental Indenture.

So what I'm asking is that if you had a question -- while I understand it says you are not responsible for its validity, if, when you are signing it, however, you had a question about whether it would be valid, would you still sign it?

A. This -- I mean it would not be my decision alone to sign it. Anything that we sign, again, is through discussions with our external counsel and with my manager. But again, in this type of situation, if I'm provided with the documentation and the backup documentation, I have no reason to believe it's not a valid transaction or a valid agreement.

Q. Do you have any recollection of being told by the issuer why NorthWestern was



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2 A. I don't have memory of the time that  
3 this Officer's Certificate came in. I don't  
4 remember the situation around the entire  
5 transaction.

6 Q. Does Bank of New York ever conduct  
7 its own examination or investigation of the  
8 facts that are expressed in the Officer's  
9 Certificate?

10 A. Again, we rely on the terms of the  
11 Officer's Certificate pursuant to the  
12 indenture, which allows us to rely on an  
13 Officer's Certificate and/or an opinion of  
14 counsel.

15 Q. Do you recall why the Third  
16 Supplemental Indenture was executed?

17 A. I mean I recall, if I can go back to  
18 the form of the Third Supplemental Indenture,  
19 it was for the NorthWestern Corporation to  
20 assume the duties and rights under the  
21 indenture from NorthWestern Energy LLC, which  
22 is one of their subsidiaries.

23 Q. Do you recall whether -- under the  
24 indenture if NorthWestern assumed the  
25 obligations, whether Clark Fork would therefore

1 LEWICKI

2 be released from its obligations?

3 MR. BIALO: Objection to the form.

4 A. I would have to go back and look at  
5 the actual governing document, the base  
6 indenture, to see what the terms and what the  
7 parties were to that indenture.

8 But to my knowledge, Clark Fork was  
9 not -- was not a party to the QUIPS Indenture.

10 Q. And when I say Clark Fork, it was  
11 formerly known as NorthWestern Energy LLC. It  
12 changed its name to Clark Fork at some point.

13 A. Okay.

14 Q. I apologize if I confused you with  
15 Clark Fork.

16 MR. BIALO: Maybe you want to state  
17 the question in a clearer way so that the  
18 witness can give you a clearer answer.

19 MR. KAPLAN: Could you remind me of  
20 my question?

21 (Record read.)

22 Q. Do you recall whether the Indenture  
23 provides that upon NorthWestern assuming the  
24 obligations for the QUIPS, that NorthWestern  
25 Energy LLC would be released from its



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2 MS. KRAFT: I join in the objection.

3 Q. If NorthWestern had submitted an  
4 Officer's Certificate that did not comply with  
5 the requirements of section 1101(c), would you  
6 have executed the Third Supplemental Indenture?

7 A. Again, we reviewed the supplemental  
8 with counsel. Based on counsel's review and  
9 legal review, we do not sign -- we would not  
10 sign off until all conditions under the  
11 agreement are met.

12 Q. Asked another way, if you or your  
13 counsel concluded that it did not comply with  
14 the terms of the Indenture, would you still  
15 sign the Supplemental Indenture?

16 A. It would be, again, brought up with  
17 management. Based on the discussion with them  
18 and counsel, we make the determination whether  
19 or not we would sign the Supplemental  
20 Indenture.

21 Q. Do you recall any discussions at all  
22 in connection with the Third Supplemental  
23 Indenture regarding the Officer's Certificate?

24 A. No.

25 Q. When executing the Third

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2 Supplemental Indenture, you didn't seek the  
3 consent of the holders of the QUIPS did you?

4 MS. KRAFT: Objection.

5 A. I need to go -- can I look at the  
6 agreement?

7 Q. Absolutely.

8 A. I'm going to read you from Section  
9 1201, remember the Third Supplemental Indenture  
10 is the assumption of the corporation of all of  
11 the responsibilities under the QUIPS Indenture  
12 from the LLC. Section 1201 says, "Supplemental  
13 indentures without consent of holder. Without  
14 the consent of any holders, the company and the  
15 trustee, at any time and from time to time, may  
16 enter into one or more indentures supplemental  
17 thereto in a form satisfactory to the trustee  
18 for any of the following purposes..." and I'm  
19 going to read the first purpose in paragraph A,  
20 "To evidence the succession of another person  
21 to the company and the assumption by such  
22 successor of the covenants of the company  
23 herein and in the securities as provided in  
24 Article 11."

25 Q. Did you seek the consent of the

1 LEWICKI

2 holders to execute the Third Supplemental  
3 Indenture?

4 A. Pursuant to this base Indenture,  
5 consent was not required from the holders.

6 Q. I'm not asking whether it was  
7 required. I'm asking whether you sought the  
8 consent?

9 A. It was not a requirement, no.

10 Q. So no, you didn't seek the consent?  
11 No, you did not seek the consent?

12 A. No, I did not.

13 Q. Okay.

14 A. Again, it was -- to preface, it was  
15 not a requirement under the governing document.

16 Q. If the modification to the Indenture  
17 had changed or modified the rights of the  
18 holders of the securities, would you have  
19 sought consent from the holders of the QUIPS?

20 A. You would have to define what the  
21 changes to the holders are. We would have to  
22 go back to the base Indenture to determine  
23 whether or not a consent of holders is  
24 required.

25 Q. If you look at 1202 of the

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2 included as a premise in your question,  
3 which I don't think is fair to the  
4 witness.

5 Q. Just for the record -- and other  
6 parties can correct me if I'm wrong -- in  
7 connection with this litigation, there is a  
8 motion to dismiss in which the bankruptcy judge  
9 found that there was a release of the  
10 subsidiary. Now, there may be ways to  
11 challenge that release, but the bankruptcy  
12 court did find there was a release, and that's  
13 the predicate.

14 MS. KRAFT: I'm going to object to  
15 the characterization of what the court did  
16 or did not do.

17 BY MR. KAPLAN:

18 Q. Assuming the Third Supplemental  
19 Indenture effectuated a release of the initial  
20 obligor such that the only obligor was going to  
21 be NorthWestern Corporation, if we use that as  
22 the base assumption, if you knew at the time  
23 that NorthWestern's publicly-issued financial  
24 statements were false and misleading, that  
25 NorthWestern had grossly overstated its

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2 revenues, would you nevertheless have executed  
3 the Third Supplemental Indenture.

4 MS. KRAFT: Objection.

5 MS. DELANEY: Objection.

6 A. Again, we talked about this on the  
7 financials, that the role of the trustee -- we  
8 do not review financials. We just -- we just  
9 confirm receipt of them.

10 I would not have any knowledge of --  
11 of misstated financials, of a potential event  
12 of default unless I had actually gotten  
13 something from either the company or a  
14 bondholder stating that fact to me.

15 Again, if I had something like that  
16 in writing, addressed to me, it would have gone  
17 up the chain-- up through the bank's process,  
18 talking about it with my manager, with counsel,  
19 and whatever action was determined, based on  
20 those meetings and conversations, is the action  
21 we would have chosen.

22 Q. Again, I am speaking hypothetically  
23 here. Hypothetically, if you are asked to  
24 execute a Supplemental Indenture such as --  
25 similar to the Third Supplemental Indenture,

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2 MR. BIALO: Fair enough. Sorry.

3 BY MR. KAPLAN:

4 Q. No problem. What I was actually  
5 asking -- this question was actually going to  
6 the section on the assets and liabilities not  
7 transferred.

8 And do you recall any discussion or  
9 any analysis as to whether the non transfer of  
10 these assets meant that NorthWestern Energy was  
11 transferring less than substantially all of its  
12 assets to NorthWestern?

13 A. Again, I do not remember any  
14 conversations to that issue. And to go back to  
15 what our process is for executing a  
16 Supplemental Indenture, we are relying on an  
17 Officer's Certificate and an opinion of counsel  
18 that are stating that the terms and conditions  
19 under the Indenture have all been met.

20 MR. KAPLAN: We are going to mark  
21 two documents. We are going to mark them  
22 as 10. We are going to mark as -- it is a  
23 Complaint. It's not Bates numbered, but  
24 it is a Complaint and Demand for Jury  
25 Trial in the Montana Second Judicial